THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 25864 of 2006

Order:

The petitioner retired from the service of the respondent-APSRTC as ADC. He states that when his son was four years old, his wife died, and therefore, he married again, and in the second marriage, he was blessed with three children, and thereupon his wife underwent family planning operation. As his wife underwent family planning operation, he was sanctioned one increment in the year 1985. While so, before he was to retire on attaining the age of superannuation, the respondent contending that the petitioner had wrongly claimed the family planning increment, issued notice dated 23.07.2007, calling upon him to show cause as to why the family planning increment should not be withdrawn and recover the amounts already paid. The petitioner states that though he submitted his explanation, the respondent without considering the same, has issued the impugned proceedings dated 09.11.2005, withdrawing the family pension increment w.e.f. 01.12.1985. The petitioner states that the respondent having passed such an order, recovered an amount of Rs.40,000/- from his retrial benefits. Hence, he filed the present writ petition.

The learned counsel for the petitioner submits that the petitioner has four children, one son through the first marriage and three children through the second marriage after the death of his first wife. He had indicated the same in all the service records as also the bus pass declaration, and at no point of time, he had suppressed about the number of children. The respondents, despite being aware of this had granted the family planning increment, and as such, it was not proper on their part to pass the impugned order, seeking recovery of the family

planning increment. He submits that the respondent without furnishing any calculation sheet, had recovered an amount of Rs.40,000/- from the retrial benefits, which is illegal and arbitrary.

The respondent filed counter. The learned Standing Counsel for the respondent-APSRTC reiterating the counter averments submitted that at the time of claiming family planning increment, the petitioner furnishing in his declaration stated that he has three living children. He has not stated that he had one living son through first wife and three living children through second wife. Since the date of appointment, he had mentioned the name of his wife as
K. Anasuya, and did not state the fact of his marrying for the second time. The fact that he has four children is evident from the bus declaration given by him on 20.05.1999, wherein apart from furnishing the name of his wife, father, he had furnished the names of his four children. Since the petitioner by making false declaration had claimed the family planning increment, the same was withdrawn after issuing show cause notice, and no exception can be taken thereto. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned counsel for the respondent-APSRTC.

It is the admitted case of the petitioner that he has four living children – one through his first wife and three through his second wife. Though the petitioner claims that at the time of claiming family planning increment, he had mentioned about his having four living children, the same is denied by the respondent. And as can be seen from the counter, the petitioner while claiming the family planning increment, on 07.12.1985, is said to have furnished only the names of three children. This apart, it is the case of the respondent that at no point of time, the petitioner has stated that he had one son through his

first wife, and that after her death, he married for the second time and that he had three children through her. Further, the petitioner, as can be seen from the counter of the respondent, in his bus pass declaration dated 20.05.1999, is said to have declared that his family members, constitute, his wife, father and four children. Admittedly, the petitioner has not filed any rejoinder denying the said stand taken by the respondent. In that view of the matter, it cannot be said that the petitioner had claimed the family planning increment by making the correct declaration, and as such, no exception can be taken to the action of the respondent in withdrawing the family planning increment from the date it was granted to the petitioner.

It is the contention of the petitioner that the respondent without furnishing him the calculation sheet, had recovered an amount of Rs.40,000/- from the retrial benefits payable to him. If that be so, the respondent is directed to furnish the calculation sheet, and if the amount of Rs.40,000/- recovered from the petitioner, is found to be in excess than what has been paid to the petitioner by way of family planning increment, then the same shall be returned to him.

With the observations as above, the writ petition is disposed of. No costs.

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N.V. RAMANA, J.

Dated: 20th July, 2007.
KSR